

EXHIBIT B

ROUGH DRAFT TRANSCRIPT

WITNESS NAME: STANLEY KISKA

DATE OF DEPOSITION: November 17, 2008

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1. Conflicts - an apparently wrong word that has the same stenotype stroke as a less-used word. Conflicts are remedied by the reporter in editing.
2. Untranslates/Misstrokes - a stenotype stroke appears on the screen as the result of the computer dictionary not having the stroke previously identified or a misstroke or partial translation of the word.
3. Reporters' notes - a parenthetical word or phrase from the reporter. Since the reporter must write each word instantly, a misunderstood word or phrase will not be apparent until some time later. Reporters' notes provide the opportunity to correct such situations.

1 available, the better.

2 Q But I said you have to take into
3 account what he was doing with his feet and his
4 body and his hands in order to come up with an
5 explanation for his accident, do you not?

6 A I think it depends. If the
7 information is available that is great. If it is
8 not available, if it is a case where someone was
9 working on a ladder and because of the fall, it led
10 to their death, let's say, certainly I am not going
11 to have that kind of testimony from a witness who
12 actually was involved with the event.

13 But I mean there can be other pieces
14 of evidence that enable you to piece together a
15 scenario as to what happened. What I am saying is
16 certainly the more information you have, the
17 better. Beyond that I am not sure how to answer
18 your question.

19 Q Mr. Kiska, in coming to a conclusion
20 about what happened in Mr. Walker's accident, was
21 it necessary for you take into account what
22 Mr. Walker was doing with his feet, with his body
23 and with his hands during the course of using the
24 ladder?

25 A I did.

1 Q Was it necessary for you to do that?

2 A I think it was helpful.

3 Q Was it necessary?

4 A To the degree that it established
5 what I already perceived for myself was that he
6 didn't put himself in a circumstance where he
7 needed to overreach to perform certain tasks.

8 And I think his testimony is
9 consistent with that.

10 Q Mr. Kiska, are you telling the
11 ladies and gentlemen of the Jury that you can
12 explain what happens in a ladder accident using a
13 stepladder of six feet in height without knowing
14 anything about what the user was doing on the
15 ladder?

16 A No, I didn't say that. Certainly if
17 I know what the intended task is and that there are
18 no obstructions to keep a person from positioning
19 the ladder in an ideal position to perform the
20 task, I mean that in and of itself is very helpful.

21 Q So it is not possible for you to
22 reach an engineering conclusion about what happened
23 in a particular ladder accident involving a six
24 foot stepladder without knowing something about
25 what the user was doing with and on that ladder.

1 Is that a fair statement?

2 A It depends upon the specific
3 circumstances. I think you're asking for me to
4 give a general interpretation for all stepladder
5 accidents as compared to a specific incident, and I
6 don't know that I can just give you a very general
7 statement or answer your question based upon that
8 degree of generality.

9 Q Actually, no, that is not what I was
10 asking. My question is very clear: Can you give
11 an engineering explanation of a ladder accident, a
12 stepladder six feet tall, without knowing something
13 about what the user was doing as he climbed or
14 stood on the ladder?

15 A I think it depends upon the
16 circumstances.

17 Q Have you ever given an opinion under
18 oath in a lawsuit in which you explained what
19 happened in a ladder accident without knowing
20 anything about what the user was doing on the
21 ladder?

22 A I may have. Again, it comes down to
23 likelihoods based upon the information that is
24 available. The more information that is available,
25 typically the stronger the likelihood of your

1 explanation being accurate. And in this case we
2 happened to have Mr. Walker's testimony from which
3 we can then work that together with all of the
4 other evidence in the case to determine the most
5 likely explanation for how the accident took place.

6 Some times that kind of information
7 is not available on rare occasions. But in this
8 case we do have that and I feel that his testimony
9 is consistent.

10 Q Are you telling the members of the
11 Jury that you have been able to testify under oath
12 as to the cause of a particular ladder accident
13 without knowing anything about what the user was
14 doing on the ladder?

15 A I don't believe I said that.

16 Q That is why I asked you the
17 question. Are you telling the Jury that?

18 A Well, you're asking a very generic
19 question.

20 Q What is generic about it?

21 A You're saying not knowing anything
22 about what is going on. I think there are
23 different degrees of information.

24 Q What part about nothing is confusing
25 to you? I want to know whether you have ever

1 theory, that would prompt you to revisit your
 2 conclusions, correct?
 3 A Certainly anything that contradicts
 4 your theory you need to give good consideration why
 5 you are discounting that if there is a reason to.
 6 Q You're familiar with the general
 7 scientific method that if you form a hypothesis to
 8 explain an event or predict an event, and then as
 9 you gather data you find there is data that doesn't
 10 fit your hypothesis, that is kind of a red flag
 11 that maybe your hypothesis isn't correct?
 12 A It can be.
 13 Q And that's the technique that you
 14 try to use in your investigations, isn't it,
 15 Mr. Kiska, to gather the facts and prepare a theory
 16 that accounts for the facts and the physical
 17 evidence and comes up with an explanation?
 18 A Yes.
 19 Q You don't try to use one theory to
 20 explain every accident do you, Mr. Kiska?
 21 A I am not sure I follow you.
 22 Q Do you use one theory or one
 23 hypothesis to explain every accident involving a
 24 stepladder that you come across?
 25 A Depends on the circumstances. If

1 all of the circumstances and all of the evidence
 2 points to that theory then, yes, there could be a
 3 trend in that direction. But certainly if there is
 4 evidence to contradict it, then we might be going
 5 down a different path.
 6 Q Let's take Mr. Walker's accident and
 7 your explanation. In this case you have a theory
 8 that Mr. Walker experienced inadvertent walking of
 9 the stepladder that made it unstable and caused him
 10 to tip over and fall. Correct?
 11 A Yes. This is a walking case to me.
 12 Q Let's see. In September you
 13 testified in a stepladder case and I think the
 14 plaintiff's name was Livingston. Is that right?
 15 A Yes.
 16 Q And in that case your hypothesis was
 17 it was an inadvertent walking and it caused the
 18 ladder to tip over and fall. Is that correct?
 19 A I think I testified -- I didn't use
 20 those exact words, but yes, the accident was
 21 precipitated by a walking event.
 22 Q What is the next case before that
 23 that you testified in before Livingston involving a
 24 stepladder, was that Kabraugh?
 25 A Possibly.

1 Q In the Kabraugh case where you were
 2 testifying for the plaintiff and the fellow was
 3 using a stepladder, you reached the conclusion that
 4 that was an inadvertent walking of the stepladder
 5 that caused the ladder to tip over and the
 6 plaintiff to fall?
 7 A No.
 8 Q Not an inadvertent walking?
 9 A No, it was not a fellow, it was a
 10 lady.
 11 Q It was a woman, it was
 12 Mrs. Kabraugh?
 13 A Yes.
 14 Q In the Kabraugh case you testified
 15 that Mrs. Kabraugh's accident was caused by
 16 inadvertent walking of the stepladder which caused
 17 it to become unstable and it tipped over and she
 18 fell?
 19 A I did.
 20 Q What about the stepladder case
 21 before that, what did you testify in before
 22 Kabraugh?
 23 A I don't remember.
 24 Q Well, let's go the other way around.
 25 Can you identify for the members of the Jury,

1 Mr. Kiska, a stepladder case in which you have
 2 investigated and reached an opinion and conclusion
 3 in the last five years in which you said something
 4 other than there was inadvertent walking of the
 5 four-legged stepladder and it caused the plaintiff
 6 to lose balance and fall?
 7 A There are a number of cases that I
 8 have been contacted about for which I performed an
 9 initial investigation and advised an attorney that
 10 I thought that there was negligence on the part of
 11 their client and that I didn't see any merit in the
 12 case.
 13 So those cases, although they did
 14 not involve deposition testimony or writing a
 15 report, they are cases I did perform some degree of
 16 investigation on for which I did decide that there
 17 was something other than a walking event there, and
 18 those cases I turned down.
 19 Q In the last five years have you
 20 testified in a stepladder case to any causal
 21 explanation of the accident other than it was
 22 inadvertent walking of the ladder that caused the
 23 tip-over and injury?
 24 A As I sit here right now, I don't
 25 believe so.

1 Q How many stepladder cases have you
2 testified in in the last five years, Mr. Kiska?
3 A A handful.
4 Q Well, we have counted for three so
5 far just in 2008. That would be a handful. How
6 many do you think in five years since 2003 you have
7 testified in?
8 A Less than ten.
9 Q When you were at Werner, according
10 to your estimate, you gave depositions or trial
11 testimony between 50 and 75 times, correct?
12 A Number of times, yes.
13 Q Between 50 and 75 times, correct?
14 A Probably in that ballpark.
15 Q In the 50 to 75 times that you
16 testified on behalf of Werner, about a third to a
17 half of those cases involved stepladders; correct?
18 A Something like that.
19 Q Correct?
20 A Something like that.
21 Q In any of the cases that you
22 testified in when you were at Werner, did you ever
23 testify that a stepladder accident was caused by
24 inadvertent walking?
25 A I don't believe so.

1 Q Did you testify on behalf of any
2 other party during the time that you were employed
3 by Werner, which I think would take you up to the
4 year 2001?
5 A Correct.
6 Q Did you testify on behalf of any
7 other party to litigation that a stepladder
8 accident was caused by inadvertent walking?
9 A Up to 2001.
10 Q Yes, sir?
11 A While employed with Werner?
12 Q Yes.
13 A No, I don't believe so.
14 Q When you were working off campus
15 from that period 1995 to 2001, I think on Werner's
16 behalf, were you working only for Werner, never for
17 any other ladder manufacturer?
18 A I believe that is correct.
19 Q Well, only you would know. Were you
20 working for anybody other than Werner?
21 A I say that because there was a time
22 when I was assigned a Werner case, where I think
23 there was a co-defendant. There was a
24 co-defendant, yes, involved with the case who
25 didn't hire their own expert.

1 Eventually Werner settled with the
2 plaintiff to get out of the case.
3 Q And you got transferred?
4 A Yes. I was basically hired out by
5 the co-defendant. I was working for Werner but I
6 was testifying on behalf of somebody else.
7 Q Okay. In any event, during your
8 employment with Werner through the year 2001, you
9 never testified that a Werner ladder was defective
10 or unreasonably dangerous, did you?
11 A No.
12 Q You did on the other hand testify
13 when you were working for Werner on many occasions
14 that the accident that you were investigating and
15 testifying about was caused by the ladder user.
16 Correct?
17 A Yes.
18 Q And as you have done here, writing a
19 report in the form of a letter to Mr. Smith, you
20 wrote reports as a Werner employee concerning
21 ladder accidents and ladder investigation; correct?
22 A From time to time I did.
23 Q You never wrote a report during the
24 time that you were employed by Werner that
25 concluded that the Werner product was at fault in

1 the accident, did you?
2 A That is correct.
3 Q The most common product for you to
4 testify about during the years you were with Werner
5 those 50 to 75 times that you have estimated, the
6 most common product was a type 37 aluminum six foot
7 stepladder, wasn't it?
8 A Probably. That is my recollection.
9 Q That is the Werner model 356?
10 A Correct.
11 Q The six in that model designation
12 stands for six feet tall?
13 A It does.
14 Q And the 35 stands for what?
15 A That was the series, 350 series for
16 which there were multiple sizes.
17 Q So it could be a 356, 358, a 354 and
18 those would designate the height of the
19 ladder; is that correct?
20 A Yes and no. The six foot was the
21 tallest model for the 350 series.
22 Q In any event, the model 356 type
23 three aluminum stepladder which by definition was
24 six feet tall was the most common product for you
25 to investigate and testify about during your years

1 as an engineer with Werner?
 2 A Probably was. More so than any
 3 other individual product.
 4 Q And you never once testified that
 5 type six foot aluminum stepladder made by Werner
 6 was prone to inadvertent walking, did you?
 7 A It never came up.
 8 Q You never once testified that the
 9 type three aluminum six foot ladder made by Werner
 10 was prone to inadvertent walking, did you?
 11 A That's true.
 12 Q When you were a ladder company
 13 employee during the years that you were at Werner,
 14 you became aware of what is commonly called in the
 15 industry cantilever damage to a stepladder. Is
 16 that fair to say?
 17 A Yes.
 18 Q Before you went to work at Werner,
 19 did you know anything about stepladders other than
 20 maybe having used them yourself?
 21 A Probably not.
 22 Q So as you gained experience as a
 23 product engineer and a senior product engineer at
 24 Werner, you became familiar with the potential and
 25 actuality of a stepladder user falling and striking

1 the ladder on the way down, correct?
 2 A I became aware of that accident
 3 scenario, yes.
 4 Q Did you perform any kind of task or
 5 reenactments while you were at Werner to illustrate
 6 the human body coming into contact with a
 7 stepladder during the accident scenario, tip over
 8 scenario?
 9 A Yes.
 10 Q Describe what work you did to
 11 document that.
 12 A It involved testing of exemplar
 13 products where they were either lying sideways on
 14 the ground in an open orientation or sometimes in
 15 the process of falling to that position from an
 16 upright position and then dropping a weight,
 17 usually a canvass bag full of lead shot to mimick
 18 the concept of a user's body striking the ladder as
 19 it was either falling to the floor or already on
 20 the floor on its side.
 21 Q Did you do that just one time?
 22 A Many times.
 23 Q Did you do it in ways that you
 24 brought the canvass bag into contact with different
 25 parts of the ladder as it fell?

1 A Yes.
 2 Q Different parts of the front
 3 assembly?
 4 A Yes.
 5 Q Did you bring it into contact with
 6 different parts of the rear assembly?
 7 A At times, yes.
 8 Q How about the spreaders?
 9 A I am sure I have.
 10 Q In other words, on many occasions
 11 you used the test set-up to demonstrate the
 12 deformation that occurs in a stepladder when a
 13 user's body comes into contact with various parts
 14 of the stepladder during the tip-over process?
 15 A Yes. I did a number of tests along
 16 those lines.
 17 Q Do you have still at your disposal
 18 any videotapes or test data from that work?
 19 A I may.
 20 Q You probably kept some of those
 21 tapes and CDs or whatever format they were in after
 22 you left Werner?
 23 A I still have a couple, yes.
 24 Q Just a couple?
 25 A I am sure I have several.

1 Q You actually have a library of those
 2 videos that were taken while you were a Werner
 3 employee that reproduces the impact damage caused
 4 by a falling user's body?
 5 A I have quite a few. I don't know
 6 how many, but for various models and various
 7 scenarios.
 8 Q Various types of ladders? And by
 9 type, I mean one, two, three?
 10 A Yes.
 11 Q Various materials of ladders,
 12 fiberglass, aluminum?
 13 A Yes.
 14 Q Various sizes of ladders, six foot,
 15 eight foot?
 16 A Yes.
 17 Q In fact, you have never seen post
 18 accident damage to a stepladder that you attributed
 19 to spontaneous folding or collapsing of the ladder
 20 with the user standing on it, is that correct?
 21 A If I am understanding you correctly,
 22 we are talking specifically about cantilever damage
 23 or are we talking about any kind of damage? I want
 24 to be clear so I can answer your question
 25 accurately.

1 questioning is with regard to aluminum
2 stepladders.

3 MR. TATE: It is. Let me ask the
4 question again.

5 Can you identify a type two aluminum
6 step had that is reasonably safe for
7 ordinary use?

8 THE WITNESS: We are talking about
9 conventional stepladder, bigger front
10 section, smaller rear section, four feet?
11 No.

12 BY MR. TATE:

13 Q Can you identify a type one aluminum
14 stepladder, six feet tall that you believe is safe
15 for ordinary use?

16 A I would say no and again, you know,
17 we are talking about areas of gray because as you
18 know I have testified before that the degree of
19 resistance to twisting and rack changes with the
20 duty ratings of ladders and generally all four
21 legged ladders have the propensity to rack and to
22 walk to some degree.

23 But certainly the lighter duty
24 ladders are more prone to it than the heavy duty
25 ladders because of their construction.

1 A I don't know. I guess Bower was
2 swallowed up by Louisville I think at one time
3 there were maybe aluminum numb ladders. I am not
4 completely familiar with their product line. There
5 are so many other smaller manufacturers that I knew
6 of over the years I was with Werner, but I can't
7 say that I have seen products in a number of years
8 so I wouldn't even begin to go down that path. But
9 I think have listed for you the predominant
10 manufacturers that I am aware of or I can recall as
11 I sit here right now.

12 Q Let's switch to fiberglass.

13 MR. SMITH: Are we going to change
14 subject areas now?

15 MR. TATE: Do you want to take break
16 MR. SMITH: Do you want to go to
17 lunch?

18 MR. TATE: Gosh. Lunches are always
19 bad for me.

20 Off the Record.

21 (Break taken.)

22 BY MR. TATE:

23 Q I want to ask you about fiberglass
24 ladders, Mr. Kiska. Are there any four legged type
25 two fiberglass ladders that are reasonably safe for

1 Q Can you identify a type one six foot
2 aluminum stepladder that you consider safe for
3 ordinary use?

4 A No.

5 Q Can you name the companies that are
6 currently manufacturing aluminum stepladders and
7 selling them in the United States?

8 A Well, the three biggest ones are
9 Werner, the Louisville Ladder group and Tri-Cam as
10 I know. I am not aware of any of the smaller
11 manufacturers are doing it. Lynn probably still
12 has an aluminum line. I am not really familiar off
13 the top of my head with all of the details of their
14 products.

15 Q Spell that.

16 A L Y N N.

17 Q Where are they located?

18 A Northeast I believe.

19 Q That would be New York or north
20 what, the northeast?

21 A Probably Massachusetts.

22 Q Okay.

23 A I am sure Mr. Vanbree can fill you
24 in with all of those details.

25 Q All right. Any others?

1 their intended use?

2 A I would say no.

3 Q Are there any four-legged type one
4 fiberglass ladders that are reasonably safe for
5 their intended use?

6 A I would say no.

7 Q How about type one A fiberglass four
8 legged ladders, are any of them reasonably safe for
9 their intended use?

10 A Talking about six foot stepladders?

11 Q Yes.

12 A We are getting into shades of gray.

13 Each one is more stable for a number of reasons
14 than the duty rating below it, but it still has the
15 propensity to walk inadvertently while the user is
16 working from it.

17 Q So what is the answer to my
18 question?

19 A They were no.

20 Q No type one A fiberglass six foot
21 stepladders that you consider reasonably safe?

22 A No. Again we are talking about the
23 conventional four legged stepladders, no.

24 Q Is it fair to say that no matter
25 what duty rating I supply if the ladder is made of

1 fiberglass or aluminum or wood, that in if it has
 2 got four legs you consider it unreasonably
 3 dangerous?
 4 A Let me be clear. First of all, I
 5 don't have as much experience with the wood ladders
 6 as with the fiberglass and aluminum.
 7 Q Because Werner made wood?
 8 A They sold wood.
 9 Q They never made it, it was labeled
 10 from another company?
 11 A They doesn't mean I have no
 12 experience with wood ladders because they never
 13 manufactured them, but they sold them. I was
 14 involved with testing and so forth from time to
 15 time.
 16 Q Okay.
 17 A Generally speaking the aluminum
 18 ladders all of the things being the same, height,
 19 duty rating, aluminum ladders were more flexible
 20 than the fiberglass and the wood.
 21 Q Is that the hierarchy, aluminum
 22 ladders are more flexible than fiberglass ladders
 23 and fiberglass ladders are more flexible than
 24 wooden ladders?
 25 A That was a trend I observed

1 personally. Now if you take any particular model
 2 you might find exceptions to the rule. Typically
 3 the aluminum ladders are the most flexible.
 4 Q Mr. Kiska, as you sit there today,
 5 can you identify for members of the journey four
 6 legged six foot stepladders manufactured by any
 7 company made of any material, wood, fiberglass or
 8 aluminum that you consider reasonably safe for
 9 their intended use?
 10 A Well, I should say that I don't have
 11 a lot of experience with the highest duty rating
 12 which is the 375. So I can't really speak to it.
 13 But certainly to the degree it is stiffer than the
 14 type one A, I think now we are getting into an area
 15 where it certainly is safer than a type one A.
 16 Q Threats take the type one double A
 17 that 375 rated ladder out of the picture for a
 18 moment because is that a fairly recent one. I
 19 won't call it a late comer, but a fairly recent
 20 actor on the scene in the ladder industry. Is that
 21 a correct statement?
 22 A Yes.
 23 Q In terms of the vast majority of
 24 ladders that have been made an sold in the United
 25 States at least, their going to be rated one a or

1 two or three, correct?
 2 A Yes.
 3 Q Can you identify for the ladies and
 4 gentlemen of the journey four legged six foot tall
 5 stepladder whether made of fiberglass or aluminum
 6 or wood rated one A, one, two or three that you
 7 consider reasonably safe for their intended use?
 8 A To this point with my experience, I
 9 would say that I have found none within those
 10 categories that I feel is reasonably safe.
 11 Q How many times did you testify under
 12 oath, Mr. Kiska, on behalf of Werner that the
 13 stepladder in question was free of defects and safe
 14 for ordinary use or words to that effect?
 15 A Probably dozens of times.
 16 Q You had an epiphany somewhere in
 17 2002 working in your garage on a stepladder that
 18 brought you to a the realization about the danger
 19 of four legged stepladders is that a fair
 20 statement?
 21 A Of sorts.
 22 Q An epiphany of sorts?
 23 A Yes.
 24 Q It was after you left Werner's
 25 payroll?

1 A Yes.
 2 Q It was while you were using your own
 3 ladder in your own garage?
 4 A Yes.
 5 Q It was eight foot?
 6 A Uh-huh, yes.
 7 Q It was fiberglass?
 8 A It was.
 9 Q And you were working overhead in
 10 your garage?
 11 A Correct.
 12 Q And there was a momentary moment of
 13 the ladder you were standing on, and instability of
 14 the ladder you were standing on that caused you to
 15 startle and realize that the ladder had moved?
 16 A It walked out from under me, yes.
 17 Q Didn't exactly leave you hanging by
 18 the rafter, did it?
 19 A Yes it did.
 20 Q Left you hanging by the rafter?
 21 A I was able to pick the ladder up
 22 with my feet and pull it back underneath me to the
 23 point I could stabilize it to at least three feet
 24 and get it squared up and come down without
 25 falling.

1 Q What were you doing to cause the
2 ladder to do that?
3 A I have a storage area in the area
4 above the rafters in my garage and I was putting
5 something up there and I had a box or something and
6 I had already placed it and I was in the process of
7 repositioning it to make sure it wouldn't fall off
8 the plank I had above and it was in the process of
9 doing that that happened, this event happened.
10 Q This momentary movement of the
11 ladder you were standing on?
12 A The walking out from under me, yes.
13 Q And because of that experience in
14 your garage in 2002, you developed a test of your
15 own called the induced walking test; is that right?
16 A Some time thereafter, yes.
17 Q How long after that?
18 A I don't know. I don't know if I
19 would have a record first of all I don't remember
20 the specific date that that near accident happened
21 with me. But I could probably through some records
22 stash the first time that I started do development
23 on that particular test that you just mentioned.
24 Q The induced walk test?
25 A Correct.

1 Q That is what you call it?
2 A I do.
3 Q Induced mean deliberate?
4 A Yes.
5 Q So you have developed a test of your
6 own outside of my standards body or organization
7 and this test is called the induced the walking
8 test for stepladders, correct?
9 A Correct.
10 Q Now, it is not as though you don't
11 have connection to the American National standards
12 institute committees that work on ladders because
13 you do?
14 A I do.
15 Q In fact you chair the sub stool
16 committee, step stool committee subcommittee on
17 step stools. You chair that?
18 A I do.
19 Q Dick Solucky was the chair and you
20 took his chair?
21 A He gave it to me. I didn't take it.
22 Q He was your former supervisor at
23 Werner?
24 A Yes.
25 Q So you currently chair the stepstool

1 subcommittee that is working up a standard called
2 the a 14 point 11 standard for step stools?
3 A That is correct.
4 Q In addition to that are you on any
5 other A 14 subcommittee?
6 A Labeling task force.
7 Q It is not actually a committee it is
8 a task force?
9 A It seems to operate as a
10 subcommittee, but call it what you want. That is
11 what it is commonly referred to.
12 Q So the induced walking test that you
13 developed is a test that you know for a fact is not
14 anywhere in any of the American National standards
15 either current or draft safety standards for
16 ladders?
17 A Well, for the Record, I mean I think
18 it should be made clear that it has its roots in A
19 14's racking test because both of them evaluate
20 ladders from the standpoint to the degree to which
21 they are flexible and twisting. But I feel that my
22 test intentionally approaches the issue from a more
23 practical standpoint.
24 Q Can you answer my question?
25 A I think I just did.

1 Q Isn't it true that your induced
2 walking test is not in any of the American National
3 Standards Institute testing protocols for
4 stepladders or ladders of any kind?
5 A The details of my protocol per se
6 are not in any published document or standard, no.
7 Q Well, in fact in your report in this
8 case and others, you describe this as a test that
9 you developed, correct?
10 A I did.
11 Q You personally?
12 A Correct.
13 Q No one else?
14 A Correct.
15 Q Do you know anyone else, any other
16 engineer the field of ladder safety who is using
17 the induced walking test that you personally
18 devised?
19 A Not as we sit here right now, no.
20 Q Is there a proposal before any
21 committee or subcommittee of the American National
22 Standards Institute or the American Ladder
23 Institute for adopting an induced walking test?
24 A Not at this point, no.
25 Q How long have you been using the

1 A And I said no. That is correct.
 2 Q And actually to your knowledge or
 3 recollection, Werner did not make and sell a three
 4 legged stepladder during the 16 years or so that
 5 you were employed there, is that correct?

6 A I know they had wooden tripod
 7 ladders, I think. I don't recall when they started
 8 making this fiberglass was my point and with regard
 9 to tripod ladders, I believe that the wooden ones
 10 were tested. I never personally tested them nor
 11 did I see the test reports. But if they were
 12 tested they would have complied with whatever
 13 section of ANSI would have been applicable.

14 I have to go back and revisit that,
 15 because I am not sure, and again with Werner I
 16 don't recall because I wasn't involved personally.
 17 They may have been included under the category of
 18 special purpose ladders for which I would have to
 19 go and revisit what protocols it would be subject
 20 to. Certainly with regard to step strength and
 21 things of that nature, they would have been tested.

22 Q So Mr. Kiska, have you ever
 23 performed any ANSI test from any protocol on a
 24 three legged stepladder?

25 A No.

1 Q Have you ever seen ANSI test
 2 protocols performed by anyone else on three legged
 3 step ladders?

4 A I believe that I have.

5 Q Tell me.

6 A Again just have a general
 7 recollection of there being some in our test
 8 facility when I was with Werner and being tested
 9 but I wasn't part of the test nor did I, as I
 10 recall, that I observed them for any length of
 11 time. I feel as though I know that they were
 12 tested, but I can't say that I was there for any
 13 length to really have a strong recollection.

14 Q You haven't reviewed testing the
 15 performed by others of three legged stem ladders?

16 A I have not.

17 Q You haven't seen any three legged
 18 stepladder test data published by either ANSI or
 19 any company in the ladder industry?

20 A I am not aware that anybody does.

21 Q The answer is no?

22 A No, of any ladder. That is.

23 generally kept private. I don't know of anybody
 24 who publishes their test data to ANSI standards of
 25 products like these.

1 Q Well, in fact you have access ANSI
 2 test data virtually any time that you testify for a
 3 plaintiff in a ladder case because the ANSI test
 4 data is typically produced in the course of the the
 5 case and you get to review it, isn't that true?

6 A If it is disclosed in discovery in a
 7 particular case, yes.

8 Q So my question is have you ever seen
 9 any testing under an ANSI protocol of a tripod
 10 ladder?

11 A I have not.

12 Q On the other hand, you yourself have
 13 tested many, many stepladders in accordance with
 14 ANSI test protocols is that fair to say?

15 A Yes.

16 Q And during all of the ANSI testing
 17 that you did of product that in was actually being
 18 made and sold as opposed to are and D of all of the
 19 testing that you did of Werner stepladders that
 20 were being made and sold, did any Werner ladder
 21 fail the ANSI test that you performed?

22 A I know there have on occasion. My
 23 specific recollection was of a time when there was
 24 going to be a change in the standard and we had to
 25 evaluate product to see if we complied with the

1 proposed changes and I saw some failures there that
 2 led to redesign of a product in order to comply and
 3 I know on occasion some products did fail toll meet
 4 certain others and what comes to mind is some
 5 longer light duty extension ladders where maybe
 6 they failed an incline load test or something to
 7 that effect.

8 Can we take a restroom break?

9 Q Sure.

10 (Break taken.)

11 BY MR. TATE:

12 Q Mr. Kiska, is there a tip over test
 13 in the American National standards for ladders that
 14 apply s to a three legged ladder?

15 A A stability test?

16 Q Yes.

17 A Again I have not seen any data done
 18 on tripod ladders for the ANSI test and there is
 19 not a specific stability test that I am aware of in
 20 the code that identifies its applicability to
 21 tripod ladders.

22 Q Is that no?

23 A Doesn't mean that they haven't been
 24 tested by don't know -- as I sit here right now I
 25 am not sure what the applicable standard is.

1 Q Is there a type three racking?
 2 A Not that I am aware of.
 3 Q Did type two racking as described in
 4 Exhibit D happen to Mr. Walker?
 5 A I don't believe so.
 6 Q Did type one racking as described in
 7 Exhibit D happen to Mr. Walker?
 8 A No.
 9 Q Are you aware of any other engineer
 10 or scientist who has published any work confirming
 11 or testing the validity of your induced walking
 12 theory?
 13 A I am not sure.
 14 Q Are you aware or --
 15 A No -- well, there are several
 16 experts in the field who have acknowledged that
 17 four-legged ladders are prone to walking as far as
 18 back as 1983 and earlier.
 19 And that is in reference to the CPSC
 20 studies that were commissioned relative to
 21 evaluating ladder safety and the experts who were
 22 involved with that testing.
 23 And more recently those who are
 24 quoted here in this particular document four have
 25 acknowledged that ladders can become unstable,

1 ago, seven?
 2 A It was when I first noticed that
 3 advertisement on the internet Werner had.
 4 Q To be fair, it is not a Werner
 5 advertisement, it is an advertisement on Amazon dot
 6 com. You have never seen it on a Werner website or
 7 in a Werner catalog?
 8 A Okay. For me to presume that is
 9 true, then I would have to ignore the words that
 10 say from the manufacturer under a certain body of
 11 information. And then I would also have to presume
 12 that the folks at Amazon dot com who sell millions
 13 of different products would have to have specific
 14 knowledge about stepladders and tripod ladders and
 15 how they are different to put that in the body of
 16 of an advertisement, which it seems a little bit
 17 hard to believe.
 18 Q On the other hand, you have looked
 19 for this Werner ad in the Werner website and in the
 20 Werner catalogs, and you can't find it anywhere?
 21 A Right.
 22 Q So doesn't that make you just a
 23 little bit suspicious that maybe the language from
 24 the Amazon dot com website didn't come from Werner?
 25 A No, on the contrary. Because I used

1 shifting from from four to three point contact.
 2 With regard to the full body of work
 3 that they have performed on this, I am not aware of
 4 it at this point.
 5 Q Which goes back to my question. Are
 6 you aware of any other engineer or scientists who
 7 has published confirming data consistent with your
 8 induced walking theory that you are propounding in
 9 this case?
 10 A Again I am not fully aware of all of
 11 the work that has been performed.
 12 Q You can only be aware of what you're
 13 aware.
 14 A So it would seem, yes, sir.
 15 Q So are you aware of any?
 16 A Not at this point as we sit here
 17 today.
 18 Q Have you Submitted to any
 19 publication, or group that has a publication, your
 20 induced walking test or your induced walk
 21 hypothesis?
 22 A I have not yet, no.
 23 Q How long have you been aware of the
 24 the induced walking hypothesis? In other words,
 25 when did you come up with this idea? Six years

1 to work for Werner and I know how the advertising
 2 department works for engineering, I believe that
 3 somebody inadvertently from the advertising
 4 department let some information out that really
 5 shouldn't have gotten out.
 6 And once they realized that it did
 7 and when I brought it to their attention in a
 8 lawsuit, they contacted Amazon dot com and had that
 9 advertisement changed.
 10 Q That is speculation on your part.
 11 A Yes and no. I wasn't there with
 12 regard to the release of the specific information,
 13 but I know how the advertising department and the
 14 engineering departments work at Werner.
 15 Q Sometimes advertising departments at
 16 ladder manufacturers and others will say things
 17 about the products that once the engineering
 18 department learns about them, asks the advertising
 19 department to retract?
 20 A That happened.
 21 Q That happened to you when you were
 22 at Werner, you were in a situation where you
 23 advised the advertising that you can't say that
 24 about our products?
 25 A I am sure it happened.

1 is that the Consumer Report magazine is better than
2 nothing?

3 A What I am saying is they make a lot
4 of good points from an unbiased perspective. And
5 that is what I am pointing out in my report and in
6 this deposition.

7 Q This isn't one of them?

8 A No, again, this is one of them just
9 like those things in the test protocols that have
10 no legitimate rational.

11 Q You fundamentally disagree with the
12 quotation from Professor Glancy in the Consumer
13 Report article that by far the most common failures
14 were one of the side rails bends inward --

15 MR. SMITH: How many times has he
16 answered that question? John, don't ask
17 him questions over and over again. Let's
18 go. That is the fourth or fifth time you
19 have asked the same question.

20 MR. TATE: Is that correct, you
21 fundamentally disagree with that?

22 THE WITNESS: I disagree with that
23 point

24 MR. TATE: Fundamentally. Not only
25 do you think it is not likely, you don't

1 unreasonably dangerous propensity to walk?

2 A Again, the testing that I did wasn't
3 really related to walking so much as it was related
4 to strength. Strength of a component per the ANSI
5 standards. The ANSI standards don't really give
6 you anything with regard to walking other than they
7 start to come close with the racking requirement,
8 but again, I disagree with their minimum
9 requirements.

10 Q Can you answer my question,

11 Mr. Kiska? Did you ever in all of the testing,
12 either ANSI testing or functional testing of the
13 Werner 356 identify an unreasonably dangerous
14 propensity for walking?

15 A I guess the answer would be no,
16 then.

17 Q How about with the Werner 356? Did
18 you identify in your tests of that model any
19 unreasonably dangerous propensity for walking?

20 A Again, with the understanding that
21 the testing that I was involved with was either
22 ANSI protocol testing or trying to replicate
23 cantilever damage as a result of someone falling
24 from a ladder, no.

25 Q Tell me exactly what movement of

1 even think it is possible, do you?

2 THE WITNESS: I don't think it is
3 what is precipitating the accidents that
4 we are seeing. I think it is a result of
5 the accident, not a cause.

6 BY MR. TATE:

7 Q How many times do you think you have
8 tested a Werner 356 stepladder personally? ANSI
9 testing, functional testing, testing for purposes
10 of a claim against the company?

11 A I don't know, 200 times.

12 Q On any of the occasion of those 200
13 times when you tested the Werner 356, did you ever
14 make an observation that it had an inherent and
15 unreasonably dangerous propensity for walking?

16 A Most of the testing that I am
17 talking about there were ANSI protocols tests which
18 really weren't related to walking. They were
19 strength tests of side rails, tops, steps,
20 cantilever testing. All testing to the protocols
21 that were outlined in ANSI. Of course, if it
22 passed those test, then the answer would be no.

23 Q So in all of the times that you
24 tested either functionally or against the ANSI
25 standards the Werner 356, you never found an

1 Mr. Walker's body or any part of his body caused
2 the stepladder that he was standing on to come off
3 of one foot and go to a three point stance?

4 A I believe it was a result of his
5 shifting his weight while he was on the ladder.

6 Q Exactly when and what was he doing?
7 A Well, he had just finished looking
8 into the area above the lowered ceiling as he was
9 instructed to do. And I believe he was in the
10 process now of getting ready to come down the
11 ladder. And it was about that time that as he is
12 moving his, as I understand, his left hand down to
13 the top cap and getting ready to step down that he
14 perceived the ladder shifting during that time.

15 And that is when he reached back up
16 to the wall with his right hand and I think his
17 right hand had been on the wall and was starting to
18 come down to the top and then he reached back to
19 the right to stabilize himself and it was about
20 that time that the ladder over.

21 Q What specifically did he do,
22 besides -- you call it shifting his weight. What
23 did he do with his body?

24 A With the understanding obviously
25 that I was not there at the time, but based upon my

1 understanding of the performance capabilities and
 2 inabilitys of this product, I know that shifting
 3 one's weight on the ladder without physically
 4 moving your feet off a step can cause the ladder to
 5 go from a four point to a three point contact.

6 It is for that reason that I have
 7 concluded that that is what he must have done at
 8 the time to precipitate the thing shifting from a
 9 stable position to an unstable position.

10 Q You have videotaped yourself making
 11 that movement on a six foot step ladder, correct?

12 A I have.

13 Q And it is your contention to the
 14 ladies and gentlemen of the Jury that what they see
 15 you doing in that video is what you contend Mr.
 16 Walker did as he was shifting his weight on the
 17 accident ladder?

18 A Or something somewhat similar, yes.

19 Q Is there any testimony by Mr. Walker
 20 that describes him undertaking the body movement
 21 that you portray in the video?

22 A I think he said that his feet were
 23 on the same step and my feet were on the same step.
 24 I think he said he didn't move his feet and I
 25 didn't move my feet.

1 Aside from that if you put a person
 2 on a ladder and you measure the forces on any one
 3 of those legs while the person is on that ladder,
 4 even if they are trying to stay perfectly still you
 5 are going to find variations from side to side.

6 Now, when you have a person standing
 7 on a step with only three inch width for any length
 8 of time, it is very likely they are going to
 9 periodically change their position on the ladder,
 10 either from a comfort standpoint or for the reasons
 11 of performing a certain task.

12 In this case looking up above to one
 13 side or another, I think you would find it very
 14 common for the the forces from one side or the
 15 other to change. So without his even realizing it,
 16 I believe that Mr. Walker's weight was shifted from
 17 one side to the other and back again perhaps in
 18 some combination that lead to this becoming
 19 unstable.

20 Q In response to my question for you
 21 to identify the movement that he made, you said
 22 that he had two feet on the same step. What else
 23 did he do that corresponds with what you portray in
 24 the video?

25 A Performing the task of looking into

1 the area, of looking into the lowered ceiling.

2 Q He said he only turned his head,
 3 nothing else. What part of that task did you put
 4 in your video turning your head?

5 A I mimick the action of looking from
 6 one side to the other, craning my neck this way and
 7 that way, and with that, I move my body somewhat
 8 from one side to the other.

9 Q Mr. Walker expressly testified he
 10 didn't move his body, he just turned his head
 11 because this is a man who is afraid of being up on
 12 ladders. Did you do that in your video?

13 MR. SMITH: Do you want to give us
 14 the page?

15 Q Sure. Page 82.

16 A Why I don't have page 82 here? Mine
 17 is out of order.

18 Q Take a look at that around line 11.
 19 Do you see where he says that?

20 A I do.

21 Q Mr. Walker testified under oath that
 22 he didn't move his body just turned his head, is
 23 that what your videotape shows?

24 A It says he didn't move. I think the
 25 question isn't asked very specifically. He is not

1 saying, you asked him about his feet and I believe
 2 he said his feet remained still.

3 So we don't know that he didn't
 4 shift his weight. It doesn't say that he didn't
 5 shift his weight.

6 Q It does say he didn't move?

7 A That's right.

8 Q Did you move in the video?

9 A I kept my feet right where they
 10 were.

11 Q Did you move your body?

12 A A little.

13 Q You moved your body in the video
 14 enough to shift the ladder, correct?

15 A I didn't think there was anything
 16 prohibitive about moving your body while on a
 17 ladder.

18 Q Is that what you did in the video,
 19 you moved your body until you could get the ladder
 20 to move underneither your feet. Is that correct?

21 A That is what happened. I moved my
 22 body and the ladder shifted.

23 Q Tell us where in Mr. Walker's sworn
 24 testimony that he describes performing the movement
 25 that you portray on the video?

1 A I don't know that it is in here.
 2 Q There isn't in Mr. Walker's sworn
 3 description of the accident a description of body
 4 movement that corresponds with what you have in
 5 your video, is there?
 6 A You don't go into that kind of
 7 detail.
 8 Q There isn't, is there?
 9 A Well, it is the only explanation
 10 that makes any sense because if you presume that he
 11 didn't move his body at all then how does accident
 12 happen how does ladder fall over.
 13 Q We are going to get to that. I
 14 would like for you to answer my question first.
 15 A I think I did.
 16 Q There isn't any description in
 17 Mr. Walker's sworn testimony of the movement of his
 18 body that corresponds with what you portray in the
 19 video. Isn't that true?
 20 A Not in that specific regard, no.
 21 Q Mr. Walker was afraid of being on
 22 this ladder, wasn't he?
 23 A Yes.
 24 Q Do you think that a man afraid of
 25 ladders, afraid of climbing ladders, who avoids

1 working with ladders, is actually going to do what
 2 you portray on this video and not know it?
 3 A Excuse me?
 4 Q Be unaware of it?
 5 A I am sure that his weight shifted on
 6 this ladder. I defy a person to climb a ladder in
 7 such a way that their weight is evenly distributed
 8 left to right the entire time they are on the
 9 ladder.
 10 Q Can you answer my question?
 11 A I just did.
 12 Q No, you did not, sir, with all due
 13 respect.
 14 A Maybe you should rephrase your
 15 question so I can understand it better.
 16 Q Do you have any evidence that
 17 Mr. Walker, a man afraid of ladders, afraid of
 18 climbing ladders, on this ladder only reluctantly,
 19 who climbed the ladder one step at a time, got to
 20 the point where he was looking up in the ceiling
 21 and did with his body what you are shown doing in
 22 your videotape? Do you have any evidence that he
 23 did that?
 24 A I don't feel that there is any
 25 evidence that he didn't.

1 Q That is not my question. Do you
 2 have evidence that he did do what you depict in the
 3 video based upon his description of the work?
 4 A There is no specific question and
 5 response in here to indicate that he shifted his
 6 weight.
 7 Q And furthermore, Mr. Kiska, a man
 8 who is afraid to be on ladders and climbs steps
 9 both feet at a time and moving very carefully and
 10 only turning his head is not a man who is going to
 11 perform the body action that you show in your
 12 videotape, is he?
 13 A I don't know that. You don't know
 14 that.
 15 Q You know it is extremely unlikely
 16 that a man who had that level of fear about being
 17 on the ladder is going to shift his body in the way
 18 that you have to do it to make the ladder move
 19 underneath you in your video. Isn't that true?
 20 A You're making a presumption.
 21 Q Isn't it true?
 22 A No, I don't know that to be true.
 23 In fact I just explained to you as an engineer who
 24 has spent so many years working with ladders, I
 25 know that the loads on any particular side are

1 going to vary while a person is on the ladder.
 2 Only when you put a stationery load
 3 on the ladder and leave it there for some period of
 4 time, you get to the point where you can have an
 5 even distribution and an unchanging load. A person
 6 is not a stationery object
 7 Q But Mr. Walker was standing as
 8 stationery as he possibly could, not moving except
 9 for turning his head, isn't that what he described?
 10 Because he was afraid to be standing where he was
 11 standing?
 12 A The record reflects for itself. I
 13 think we are going to have to agree to disagree.
 14 Q Isn't that what the record says?
 15 A I stated before in response to your
 16 question, there is no specific reference to a
 17 person shifting his weight.
 18 Q But on the positive side, Mr. Walker
 19 described standing as still as he could stand, only
 20 moving his head, not moving his body?
 21 A It doesn't say standing as still as
 22 he could stand. I don't see that in the record. I
 23 think that is something you're interjecting adding
 24 to the record, unless it is in here and I am not
 25 seeing it, I would ask that you point it out to me.

1 Q Where was Mr. Walker's hand on the
 2 wall vis-a-vis the stepladder that he was standing
 3 on, was it above the stepladder?

4 A Yes.

5 Q He far above the step ladder?

6 A I don't think he says specifically
 7 in the record.

8 Q No, but we can work out the
 9 geometry, can't we?

10 A Yes.

11 Q Do you know how much force it would
 12 take for a man who is holding against the wall to
 13 tip a six foot stepladder if he is standing on the
 14 fourth step and he weighs 200 and 20 pounds?

15 A We can certainly estimate it if that
 16 is what you want. Presuming that this ladder
 17 passed ANSI and I think there is a label on the
 18 ladder indicating that it did.

19 The ANSI side test would be 20
 20 pounds at the top cap, just there about. And the
 21 net reaction force would be at the step he is
 22 standing on, because that is where his feet are.

23 So it would be something more than
 24 20 pounds and if we work out the numbers it sounds
 25 like it is about a third more, something like that.

1 A I had to discount his testimony that
 2 he was pulling his hand from the wall when he first
 3 felt the ladder move.

4 Q You don't have any trouble
 5 discounting testimony if you think it is not
 6 credible, do you?

7 A That is just it. He said he moved
 8 his hand from the wall and he perceived the ladder
 9 moving.

10 Q Now it's is no question, we have
 11 read it, that Mr. Walker testified that he had one
 12 hand holding against the wall and the other holding
 13 the flashlight when he felt the ladder move. You
 14 read it outloud just a few minutes ago.

15 What did you do to rule out that his
 16 holding against the wall by a man who is afraid, by
 17 a man who doesn't want to be up on the ladder, in
 18 fact tipped the ladder over. What did you do to
 19 rule that out?

20 A It just didn't dovetail with his
 21 testimony.

22 Q It didn't dovetail with his
 23 testimony, that's what you did to rule it out?

24 A What you're suggesting is that he is
 25 pushing on the wall with such force, with 30 pounds

1 Q Are you sure of that?

2 A No, I am not positive, but just
 3 sitting here running through the numbers in my
 4 head. Let's say that the ladder is about six feet
 5 tall, not exactly six feet lever arm. So 20 times
 6 six is going to be 120. If I divide that by about
 7 four, so about 50 percent more roughly speaking.

8 Q Did you consider the scenario of
 9 Mr. Walker's accident that causes the tip-over
 10 because he is holding his hand against the wall?

11 A That doesn't seem likely given the
 12 scenario that we talked about here.

13 Q My question is did you consider it?

14 A I did.

15 Q Where did you consider it?

16 A I considered it in my thought
 17 process in the process of doing my theory.

18 Q So is it your testimony that you
 19 gave thought to the possibility that Mr. Walker in
 20 holding against the wall with his right hand tipped
 21 the ladder that he was standing on, you gave
 22 thought to that?

23 A I did.

24 Q What did you do to rule out that
 25 hypothesis?

1 of force to tip the ladder over.

2 Q By your estimate?

3 A Okay.

4 Q Let's go with your estimate. Are
 5 you saying it is impossible for Mr. Walker to push
 6 against the wall with his right hand with 30 pounds
 7 of force?

8 A He doesn't say that here. He says
 9 he is holding against the wall. It doesn't say he
 10 is pushing on the wall.

11 Q What do you think holding against
 12 the wall means?

13 A Stabilizing himself.

14 Q Here is my question: Do you think
 15 it is impossible for Mr. Walker to apply the
 16 estimated poundage, 30 in your number, to the wall
 17 with his right hand to push himself over?

18 A Is it possible to extent 30 pounds
 19 of force with your right hand?

20 Q Yes.

21 A Yes.

22 Q Okay. And he does say more than
 23 once in his sworn testimony that at the moment he
 24 felt the ladder move, this appears in the
 25 transcript at 104, that he had his right hand and